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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

ADAK EAGLE ENTERPRISES, LLC)
d/b/a ADAK TELEPHONE UTILITY)

CC Docket No. 96-45

Petition for Waiver of the Commission's)
Rules to Obtain Accelerated USF)
Support and to Participate in NECA)
Pools and Tariffs)

SUPPLEMENT TO PETITION FOR WAIVER OF THE COMMISSION'S RULES
TO OBTAIN ACCELERATED USE SUPPORT
AND TO PARTICIPATE IN NECA POOLS AND TARIFFS

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d/b/a Adak Telephone Utility

Filed: June 6, 2005

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**SUPPELEMENT TO PETITION FOR WAIVER OF THE COMMISSION'S RULES
TO OBTAIN ACCELERATED USF SUPPORT
AND TO PARTICIPATE IN NECA POOLS AND TARIFFS**

I. Introduction

On February 9, 2005, Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility ("AEE") pursuant to section 1.3 of the Commission's rules,¹ petitioned for a waiver of various Commission rules in order to allow AEE to immediately begin receiving high-cost Universal Service Fund ("USF") support and participate in National Exchange Carrier Association, Inc. ("NECA"), pools and tariffs ("AEE's Petition"). Specifically, AEE requested the following:

- (1) If the Commission determines it is necessary, a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's rules²;
- (2) Waiver of sections 36.611 and 36.612 of the Commission's historical cost rules³ to allow AEE immediate access to USF high-cost loop support, effective January 1, 2005, based on AEE's current data for an interim period;

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. part 36.

³ 47 C.F.R. §§ 3611, 3612.

(3) Waiver of the October 1, 2004, and January 1, 2005, state USF certification deadlines set forth in section 54.314(d) of the Commission's rules⁴;

(4) Waiver of sections 54.301(b) and 54.903(a)(3) of the Commission's rules⁵ to allow AEE to be eligible to receive local switching support and interstate common line support for the period beginning January 1, 2005; and

(5) Waivers of the definition of "telephone company" in section 69.2(hh) and of the annual election filing deadline in section 69.3(e)(6)⁶ to allow AEE to become a member of NECA and to immediately participate in NECA pools and tariffs.

On May 27, 2005, the Commission issued a public notice designated DA 05-1544 establishing a pleading cycle for Commission consideration of AEE's request for waivers. That notice provides that interested parties may file comments on or before June 13, 2005.

The purpose of this supplement is to advise the Commission of orders of the Regulatory Commission of Alaska ("RCA") that are relevant to the Commission's consideration of the requested waivers and to update the scope of the requested waivers in light of the lapse of time since AEE filed its Petition. Specifically, this supplement advises the Commission that the RCA has designated AEE as an Eligible Telecommunications Carrier ("ETC") and supports AEE's request for waiver of the study area definition. In addition, this supplement requests additional waivers of deadlines for state certification regarding use of USF support established by section 54.314(d) of the Commission's rules.⁷

⁴ 47 C.F.R. § 54.314(d).

⁵ 47 C.F.R. §§ 54.301(b), 54.903(a)(3).

⁶ 47 C.F.R. §§ 69.2(hh), 69.3(e)(6).

⁷ See 47 C.F.R. § 54.314(d).

1 **II. Discussion.**

2 **A. The Regulatory Commission of Alaska has Designated AEE as an ETC.**

3
4 A central goal of AEE's application is to obtain waivers necessary for AEE to
5 immediately begin receiving high-cost USF support. Section 214(e)(1)(B) of the
6 Telecommunications Act of 1996⁸ gives state regulatory commissions the responsibility of
7 deciding whether a carrier is an ETC for the purpose of receiving state and federal universal
8 service funding. Thus, AEE must be designated as an ETC by the RCA—Alaska's state
9 regulatory commission—and receive the requested waivers in order to immediately begin
10 receiving high-cost USF support.
11

12 In its Petition, AEE advised the Commission that it had, on November 22, 2004,
13 filed a request with the RCA for designation as an ETC.⁹ AEE indicated that it expected the
14 RCA to grant AEE ETC designation in the near future. In Order No. U-04-109(1), dated May
15 25, 2005, the RCA designated AEE as an ETC. A copy of Order No. U-04-109(1) is attached
16 hereto as Exhibit A. The ordering paragraph of that order states:
17

18 The application filed by [AEE] requesting designation as a carrier
19 eligible is approved, enabling it to receive federal universal service
20 support under the Telecommunications Act of 1996 for the service
21 area for which it is temporarily certificated under Certificate of
22 Public Convenience and Necessity No. 702.¹⁰
23

24 Thus, to the extent that ETC designation is a prerequisite for the grant of any of the requested
25 waivers, the RCA's Order No. U-04-109(1) satisfies that prerequisite.
26

27 ⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996).

28 ⁹ See AEE's Petition, p. 3.

¹⁰ Exhibit A, p. 9.

B. The Regulatory Commission of Alaska Supports AEE's Conditional Request for Waiver of the Study Area Definition.

In its Petition, AEE indicated that it was not required to seek a waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's rules for the purpose of establishing a study area, due to the fact that AEE's certificated service area has never been part of any existing study area or been previously served by any certificated local exchange carrier or designated ETC.¹¹ If, however, the Commission determines that such a waiver is required, AEE requested that the Commission grant a waiver of the study area definition to permit AEE's certificated service area to serve as its study area for purposes of USF support.¹²

A study area waiver is appropriate if (1) the change in study area boundaries does not adversely affect the USF; (2) no state commission having regulatory authority opposes the change; and (3) the public interest will be served.¹³ With respect to the requirement that no state commission having regulatory authority oppose the change, AEE indicated in its Petition that the RCA has not opposed designating AEE's certificated service area as a study area for high-cost support purposes.¹⁴ AEE further indicated that it would request that the RCA expressly state its non-opposition to the requested study area definition waiver.¹⁵

¹¹ See AEE's Petition, pp. 7-8.

¹² See *id.*, p. 8.

¹³ See *M&L Enterprises, Inc., d/b/a Skyline Telephone Company, Petition for Waiver of Sections 36.611, 36.612, and 69.2(hh) of the Commission's Rules*, Order, 19 FCC Rcd 6761, paras. 5, 13 (2004).

¹⁴ See AEE's Petition, p. 9.

¹⁵ *Id.*

1 In Order No. U-04-109(1), the Commission expressly indicated its support for
2 AEE's request for waiver of the study area definition and establishment of AEE's certificated
3 service area as its study area:
4

5 AEE currently serves 150 access lines and is defined as a rural
6 carrier under 47 U.S.C. § 153(37). It is unclear whether AEE has a
7 "study area" since the U.S. military rather than a certificated
8 carrier previously provided the telecommunications service on
9 Adak. AEE is an average schedule company and therefore does
10 not perform the jurisdictional analysis for which study areas were
11 designated. We have previously approved ETC status for an
12 average schedule company's certificated service area rather than its
13 study area, and we believe it is consistent with the intent of federal
14 law to do so in this case. We acknowledge that AEE has petitioned
15 the FCC for waiver of the "study area" definition, in case such
16 waiver is needed, to allow AEE's certificated service area to be
17 designated as its service area for purposes of determining USF
18 support. We support AEE's request, and we therefore designate
19 AEE's certificated local exchange service area as its ETC service
20 area.¹⁶

21 Thus, the extent required, U-04-109(1) clearly evidences the RCA's non-opposition to AEE's
22 request for waiver of the study area definition.
23

24 **C. Additional Waivers of State Certification Regarding Use of USF Funds Are
25 Needed.**

26 In order for rural incumbent local exchange carriers to receive USF support, the
27 Commission's rules require state commissions, with respect to each carrier, to certify to the
28 Commission and the Universal Service Administrative Corporation that "all federal high-cost
support provided to such carriers within that state will be used only for the provision,
maintenance, and upgrading of facilities for which the support is intended."¹⁷ Carriers certified

¹⁶ Exhibit A, pp. 5-6 (footnotes omitted).

¹⁷ 47 C.F.R. § 54.314(a).

1 by October 1 may receive USF support for all of the succeeding year.¹⁸ If the certification is
2 provided after October 1 but no later than January 1, carriers certified may receive USF support
3 for only the second, third, and fourth quarters of the year.¹⁹ Similarly, if certification is provided
4 after January 1 but no later than April 1, USF support is available for the third and fourth
5 quarters of the year, and if certification comes after April 1 but no later than July 1, support is
6 available for only the fourth quarter.²⁰

7
8 By virtue of the waivers requested in its application, AEE seeks to obtain USF
9 support beginning in the first quarter of 2005. Accordingly, AEE requested a waiver of the
10 October 1, 2004, and January 1, 2005, state USF certification deadlines set forth in
11 section 54.314(d) of the Commission's rules.²¹ AEE has asked the RCA to provide the necessary
12 certification promptly upon AEE's ETC designation. Given the lapse of time since its initial
13 application, an additional waiver of the April 1 filing deadline of section 54.314(d)(3) of the
14 Commission's rules is needed in order to effectuate AEE's receipt of USF funds for 2005.
15 Further, an additional waiver of the July 1 certification deadline of section 54.314(d)(4) of the
16 Commission's rules will be needed if the RCA does not provide the certification before that time.
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24 ¹⁸ 47 C.F.R. § 54.314(d)(1).

25 ¹⁹ 47 C.F.R. § 54.314(d)(2).

26 ²⁰ 47 C.F.R. §§ 54.314(d)(3)-(4).

27 ²¹ AEE's Petition, pp. 14-15.

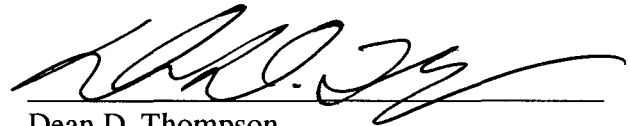
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III. Conclusion

As the foregoing indicates, the RCA has designated AEE as an ETC within its certificated service area and supports AEE's conditional request for waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's rules. In addition, given the lapse of time since AEE's filing, additional waivers of the state certification deadlines of section 54.314(d) of the Commission's rules are needed in order for AEE to receive USF support for the time period beginning January 1, 2005.

RESPECTFULLY SUBMITTED this 6th day of June, 2005.

KEMPPPEL, HUFFMAN AND ELLIS, P.C.
Attorneys for Adak Eagle Enterprises, LLC


Dean D. Thompson


Paul J. Jones

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

RECEIVED
MAY 25 2005
Kempel, Quinn & Ellis

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Application by ADAK EAGLE
ENTERPRISES, LLC d/b/a ADAK TELEPHONE
UTILITY for Designation as an Eligible
Telecommunications Carrier

U-04-109

ORDER NO. 1

ORDER GRANTING
ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS
AND REQUIRING FILINGS

BY THE COMMISSION:

Summary

We designate Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility (AEE) as an eligible telecommunications carrier (ETC) for purposes of receiving state and federal universal service funding. We require AEE to advertise its services and to file annual reports to certify its proper use of universal service fund (USF) monies.

Background

We granted AEE a temporary certificate of public convenience and necessity for authority to provide local exchange telecommunications

1 service on Adak in Docket U-03-76, and we required AEE to file for ETC status.¹ AEE
2 submitted a request for designation as an ETC throughout its certificated service area
3 on November 22, 2004, and filed the Affidavit of Larry Mayes attesting that it is offering
4 or arranging to offer the basic nine services required by 47 C.F.R. 54.101(a).² At the
5 time of its application, AEE was unable to offer three of the nine required services.

6 We issued a public notice of the application on December 10, 2004, with a
7 date of January 10, 2005, for filing of comments. We received no comments.

8 On December 20, 2004, AEE filed a notice in Docket U-03-76 indicating
9 the utility was offering the three required services not previously offered: operator
10 services, directory assistance services, and toll limitation for qualifying low-income
11 customers.³ AEE stated that it now offered all nine services required for universal
12 service support.

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19 ¹Order U-00-137(9)/U-03-76(1), *Order Conditionally Approving Application:*
20 *Approving Tariff, in part; Granting Temporary Certificate; Revoking Temporary*
21 *Operating Authority; Closing Docket U-00-137; and Requiring Filings*, dated October 8,
22 2004. Docket U-00-137 is entitled *In the Matter of the Application by Adak Telephone*
23 *Utility for a New Certificate of Public Convenience and Necessity*. Docket U-03-76 is
24 entitled *In the Matter of the Application by ADAK EAGLE ENTERPRISE LLC d/b/a*
25 *ADAK TELEPHONE UTILITY for a Certificate of Public Convenience and Necessity to*
26 *Provide Local Exchange Service in Alaska*.

24 ²We opened Docket U-04-109 to consider AEE's request for ETC designation
25 and transferred these filings into the new docket.

25 ³*Notice of Availability of Remaining Supported Services*, filed December 20,
26 2004, in Docket U-03-76.

Discussion

Under the Telecommunications Act of 1996,⁴ state commissions must decide whether applications for ETC status should be granted.⁵ Federal law requires us to apply the following criteria to our evaluation of AEE's request for ETC status:⁶

- Has AEE demonstrated that it owns at least some facilities?
- Has AEE demonstrated a capability and commitment to provide the nine basic services required by Federal Communications Commission (FCC) regulation?⁷
- Has AEE demonstrated it will appropriately advertise its services?
- Has AEE clearly defined the service area for which it seeks ETC status and is that area reasonable?

⁴Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (the Act).

⁵47 C.F.R. § 54.201.

⁶The criteria applicable to AEE as an incumbent local exchange carrier are derived from Section 214(e)(1) of the Telecommunications Act of 1996 which provides:

(1) A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

⁷The nine basic services are defined at 47 C.F.R. § 54.101.

1 Ownership of Facilities

2 AEE has been the local exchange services provider on Adak Island since
3 departure of the U.S. military in the fall of 2000.⁸ AEE is in the process of upgrading
4 and maintaining the plant used to provide the telecommunications facilities on Adak and
5 so meets the requirements of Section 214(e) that an ETC own at least some facilities
6 used to provide service.⁹

7 Nine Basic Services

8 AEE affirmed it currently provides the nine basic services required for USF
9 support to all of its customers.¹⁰ AEE stated its customer base is currently located in
10 the city core area but anticipates future development in outlying areas. In its recent
11 local exchange certification docket,¹¹ AEE provided us with an engineering report and
12 full explanation of its ability to serve. Further, AEE is the only carrier serving Adak, and
13 while we have no record of complaints regarding failure to serve, AEE anticipates
14 having the capability to serve future customers in outlying areas once it receives funding
15 for network replacement and upgrades. We determine that AEE has demonstrated the

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17 ⁸AEE managed the telephone utility services for Adak Reuse Corporation (ARC),
18 a local redevelopment authority set up to facilitate reuse of the Adak Naval Complex.
19 On September 19, 2003, the Commission approved a transfer of temporary operating
20 authority from ARC to AEE. See Order U-00-137(8), *Order Finding Request for*
21 *Extension of Time Moot, Vacating Filing Requirement, and Granting Request for*
22 *Transfer of Temporary Operating Authority*, dated September 19, 2003.

23 ⁹On March 17, 2004, the land and improvements of the Adak Naval Complex
24 were transferred to the Aleut Corporation. AEE has obtained a long-term lease of
25 existing facilities but states it will own future additions and improvements. See *Petition*
26 *for Waiver of the Commission's Rules to Obtain Accelerated USF Support and to*
Participate in NECA Pools and Tariffs, filed February 9, 2005, with the FCC in
CC Docket No. 96-45 at 5.

¹⁰AEE filed the Affidavit of Larry Mayes attesting to provisioning of the nine basic
services in support of this application.

¹¹See Docket U-03-76.

1 capability to offer the nine basic services throughout its service area upon reasonable
2 request.

3 Advertisement of Services

4 Section 214(e)(1)(B) of the Act¹² requires an ETC to advertise the
5 availability of the nine basic services (including Link Up and Lifeline)¹³ and the charges
6 for the services using "media of general distribution." As we have routinely done in
7 designating ETC status to carriers, we require AEE to advertise its services as follows:

- 8 1. once every two years, perform community outreach through appropriate
9 community agencies by notifying those agencies of AEE's available services;
- 10 2. once every two years, post a list of services on a school or community
11 center bulletin board;
- 12 3. once a year, provide a bill stuffer indicating available services; and
- 13 4. once a year, advertise services through the newspaper circulated in the
14 locations served by AEE.

14 Service Area

15 Section 214(e)(5) of the Act provides that we shall designate the ETC
16 service area for the purpose of determining universal service obligations and support
17 mechanisms. In the case of rural carriers, the service area is defined as the carrier's
18 study area unless or until the FCC and the States, after consultation with a Federal-
19 State Joint Board, establish a different definition.

20 AEE currently serves 150 access lines and is defined as a rural carrier
21 under 47 U.S.C. § 153(37). It is unclear whether AEE has a "study area" since the
22 U.S. military rather than a certificated carrier previously provided the
23

24 ¹²See n.4.

25 ¹³Link Up is described at 47 C.F.R. § 54.411, and Lifeline is described at
26 47 C.F.R. § 54.405.

1 telecommunications services on Adak.¹⁴ AEE is an average schedule company and
2 therefore does not perform the jurisdictional analysis for which study areas were
3 designated. We have previously approved ETC status for an average schedule
4 company's certificated service area rather than its study area,¹⁵ and we believe it is
5 consistent with the intent of federal law to do so in this case. We acknowledge that AEE
6 has petitioned the FCC for waiver of the "study area" definition, in case such waiver is
7 needed, to allow AEE's certificated service area to be designated as its service area for
8 purposes of determining USF support. We support AEE's request, and we therefore
9 designate AEE's certificated local exchange service area as its ETC service area.

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23 ¹⁴Technically, the term "study area" refers to the geographic area over which a
company keeps its books for purposes of performing a jurisdictional separations study.

24 ¹⁵See Docket U-97-190, *In the Matter of the Request by NORTH COUNTRY*
25 *TELEPHONE, INC., for Designation as a Carrier Eligible To Receive Federal Universal*
26 *Service Support Under the Telecommunications Act of 1996.*

1 Additional Federal Criteria

2 We have previously required ETC applicants to meet additional
3 requirements identified by the FCC in its March 17, 2005 Report and Order.¹⁶ As a
4 regulated local exchange carrier (LEC), AEE is already subject to these requirements
5 under our regulations. AEE is required to provide equal access upon receipt of a
6 bona fide request and adhere to our regulations regarding consumer protection and
7 service quality standards. AEE has stated in its certification application that its central
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16 ¹⁶See *Federal-State Joint Board on Universal Service*, Report and Order, CC
17 Docket No. 96-45, FCC 05-46, rel. March 17, 2005 (Report and Order).

18 See Report and Order at ¶ 2. An ETC applicant must:

- 19 1. file a five-year plan detailing how high cost universal service support will
20 be used to improve coverage, service quality or capacity in every wire center
21 for which they seek ETC designation;
- 22 2. demonstrate the ability to remain functional in emergency situations by
23 having backup power, having the ability to reroute traffic around damaged
24 facilities, and being capable of handling traffic spikes.
- 25 3. demonstrate they will satisfy consumer protection and service quality
26 standards;
- 27 4. offer a local usage plan comparable to incumbent LEC services; and
- 28 5. acknowledge that they may be required to provide equal access.

1 office has an operational battery reserve of roughly 12 hours¹⁷ which exceeds our
2 requirement.¹⁸

3 In Docket U-03-76, AEE filed an engineering report and a copy of its
4 RUS¹⁹ loan application detailing network improvements proposed for a five-year
5 period.²⁰ We consider this plan, in addition to the LEC requirements to file capital
6 program and planning statements with annual reports,²¹ to be sufficient at this point to
7 fulfill the intent of the federal requirement for a five-year plan.

8 ETC Designation and Certification

9 In AEE's local exchange certification docket, we required²² AEE to apply
10 for membership in AECA²³ and NECA²⁴. AEE joined the AECA pool effective
11 January 1, 2005, and also filed with the FCC to participate in NECA.

12 With these determinations, we designate AEE as an ETC for the purpose
13 of receiving state and federal universal service funds. Further, we annually open a
14 proceeding and require information from all ETCs for purposes of making a certification
15 to the FCC that universal service funds are being used for the purposes intended. We
16 require this information from all ETCs whether economically regulated by us or not. As

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18 ¹⁷ *Submittal of Revised Application for a Certificate of Public Convenience and*
19 *Necessity*, filed March 25, 2004, in Docket U-03-76 at 8.

20 ¹⁸ See 3 AAC 52.270(b).

21 ¹⁹ Rural Utility Service (RUS).

22 ²⁰ *Submission of Tariff Filings and Updated Engineering Studies in Compliance*
23 *with U-03-76(2) and Additional Financial Information*, filed January 3, 2005, in Docket
24 U-03-76.

25 ²¹ See 3 AAC 52.330.

26 ²² See n.1.

²³ Alaska Exchange Carriers Association, Inc. (AECA).

²⁴ National Exchange Carriers Association, Inc. (NECA).

1 an ETC, AEE is required to provide the information requested of all ETCs when we
2 open our proceeding in the near future.

3 This order constitutes the final decision in this proceeding. This decision
4 may be appealed within thirty days of the date of this order in accordance with AS
5 22.10.020(d) and the Alaska Rules of Court, Rule of Appellate Procedure (Ak. R. App.
6 P.) 602(a)(2). In addition to the appellate rights afforded by AS 22.10.020(d), a party
7 has the right to file a petition for reconsideration as permitted by 3 AAC 48.105. If such
8 a petition is filed, the time period for filing an appeal is then calculated under Ak. R. App.
9 P. 602(a)(2).

10 ORDER

11 THE COMMISSION FURTHER ORDERS:

12 1. The application filed by Adak Eagle Enterprises, LLC d/b/a Adak
13 Telephone Utility requesting designation as a carrier eligible is approved, enabling it to
14 receive federal universal service support under the Telecommunications Act of 1996 for
15 the service area for which it is temporarily certificated under Certificate of Public
16 Convenience and Necessity No. 702.

17 2. By July 1, 2005, Adak Eagle Enterprises, LLC d/b/a Adak Telephone
18 Utility shall comply with the advertising requirements as set out more fully in the body of
19 this order, and file evidence of that compliance with the Commission.
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Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

1 3. Adak Eagle Enterprises, LLC d/b/a Adak Telephone Utility shall file
2 responses to our requests for information in our proceeding concerning annual
3 certification of use of funds to the Federal Communications Commission.

4 DATED AND EFFECTIVE at Anchorage, Alaska, this 25th day of May, 2005.

5 BY DIRECTION OF THE COMMISSION
6 (Commissioners Kate Giard and Anthony A. Price,
7 not participating.)

